

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :  
CORPORATION, :  
: Plaintiff, :  
: : 12 Misc. 115 (JSR)  
-v- : : 13 Civ. 8994 (JSR)  
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: :  
: :  
: :  
: :  
BERNARD L. MADOFF INVESTMENT : ORDER  
SECURITIES LLC, :  
: :  
: :  
: :  
Defendant. :  
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In re:

MADOFF SECURITIES

PERTAINS TO THE FOLLOWING CASE:

IRVING H. PICARD,

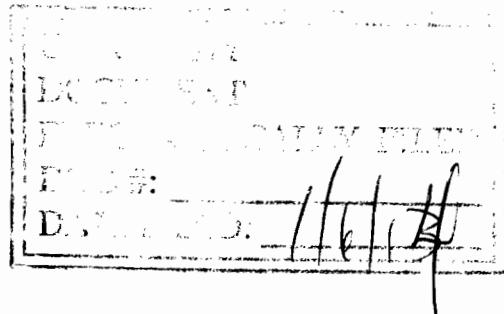
Plaintiff,

-v-

SONJA KOHN, et al.,

Defendants.

JED S. RAKOFF, U.S.D.J.



On December 17, 2013, defendants Josef Duregger, Peter Fischer, Wilhelm Hemetsberger, Werner Kretschmer, Harald Nograsek, Gerhard Randa, and Stefan Zapotocky (collectively, the "Bank Austria Individual Defendants") moved to withdraw the reference to the Bankruptcy Court because of "substantial and material consideration of non-Bankruptcy Code federal statutes." In re Ionosphere Clubs, Inc., 922 F.2d 984, 995 (2d Cir. 1990). At the same time, however, the Bank Austria Individual Defendants indicated their intention to raise a

defense based on lack of personal jurisdiction. See Mem. of Law in Support of the Motion to Withdraw the Reference, 13 Civ. 8994, ECF No. 2 at 11 n.8 ("The Bank Austria Individual Defendants . . . intend to assert a personal jurisdiction defense that, if successful, would compel dismissal of every claim alleged against them.").

A jurisdictional defense is a threshold matter that should ordinarily be resolved at the outset, and that, in these cases, is properly addressed by the Bankruptcy Court. Accordingly, the Court hereby denies defendants' motion to withdraw the reference without prejudice to its being reasserted if the Bankruptcy Court resolves the personal jurisdiction issue in favor of exercising jurisdiction. See, e.g., Order, 11 Civ. 7112, ECF No. 13 (S.D.N.Y. Dec. 7, 2011) ("If the Bankruptcy Court denies these defendants' motion to dismiss for lack of personal jurisdiction, this Court will then promptly address their motion to withdraw the reference."). The Clerk of the Court is hereby ordered to close item number 1 on the docket of 13 Civ. 8994.

SO ORDERED.

Dated: New York, New York  
January 3, 2014

  
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JED S. RAKOFF, U.S.D.J.